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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ARTURO S., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ARTURO S.,

Defendant and Appellant.

G047887

(Super. Ct. No. DL031721)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Jane L. Shade, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Susan Miller, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Arturo S. appeals from an order of the juvenile court imposing gang terms as part of his probation, arguing those terms are not sufficiently narrowly tailored to him or his underlying offenses. We conclude that imposing gang terms was not an abuse of discretion, and therefore affirm.

I

FACTS

The Orange County District Attorney filed a petition pursuant to Welfare and Institutions Code section 602 on October 5, 2009 alleging that appellant committed aggravated assault (Pen. Code, § 245, subd. (a)(1)). At a hearing on November 3, he admitted the offense and was declared a ward of the court. The court committed him to juvenile hall for 70 days and placed him on supervised probation.¹ Among others, his probation terms included reporting to his probation officer as directed, not using, possessing, or being under the influence of alcohol or illegal drugs, and refraining from associating with anyone who he knew was in a criminal street gang, was disapproved by his parents or probation officer, or was on probation or parole.

On August 6, 2010, another subsequent petition was filed alleging appellant committed vandalism (Pen. Code, § 594, subds. (a), (b)(2)(A)) and possessed graffiti tools (Pen. Code, § 594.2, subd. (a)). He admitted the offenses, and he was again placed on supervised probation and ordered to perform 200 hours of community service.

On December 13, the Orange County Probation Department filed a violation notice alleging appellant had violated his probation in numerous respects, including failing to report to probation, not attending school, associating with people he

¹ A few days after the hearing, a subsequent petition was filed alleging appellant had, prior to the hearing on the assault allegation, possessed a concealed dirk or dagger. That petition was dismissed pursuant to appellant's motion.

had been directed not to associate with, and by being arrested for jaywalking and possessing controlled substances. On December 21, he admitted the violations, was ordered to serve 45 days in juvenile hall, and remained on supervised probation. In addition to the prior probation terms, the court also ordered appellant to submit to drug testing as ordered by the court or probation and not to test positive.

A subsequent petition was filed on May 27, 2011, alleging appellant committed vandalism (Pen. Code, § 594, subds. (a), (b)(2)(A)) and resisted arrest (Pen. Code, § 148, subd. (a)(1)). On July 12, he admitted the resisting arrest allegation, and the vandalism allegation was dismissed. The court ordered appellant to serve 10 days in the court work program and to remain on supervised probation.

On December 14, 2012, the probation department filed the notice of hearing at issue here. As relevant here (several allegations were struck at the beginning of the hearing at the prosecutor's request), the petition alleged appellant violated probation by failing to report to his probation officer on four occasions, testing positive for THC on four occasions, and associating with an individual named Lester Romero, after being directed by his probation officer and/or parents not to associate with him.

At the hearing on January 7, 2013, Deputy Probation Officer Carlos Pinto testified regarding appellant's failure to report and his positive tests for THC. With respect to Romero, Pinto had received a phone call from an officer advising him that appellant and Romero were in a car together on September 21, 2012. When Pinto asked appellant about being in a car with Romero, appellant admitted it was true. Romero was also on probation under full gang terms. Appellant did not cross-examine Pinto or offer any witnesses on his own behalf.

The court then heard argument. The prosecutor argued there was sufficient evidence to find the allegations true. She asked that the court order appellant to serve 30 days in custody and to continue probation thereafter with full gang conditions, because of

his association with Romero. Appellant's counsel's argument focused on disposition, arguing there was insufficient evidence to impose gang terms.

The court noted that in addition to the testimony heard that day, it had also reviewed the report submitted by probation, which we will discuss in further detail below. The court ultimately found that appellant was in violation of his probation terms as set forth in the petition.

Prior to disposition, the court invited further testimony from Pinto, and specifically asked for his recommendation. He testified: "I started supervising the minor in June 2012. Since then he's had various contacts with probation, gang unit, as well as Tustin Police Department gang unit, and [it] has been brought to my attention that the minor continues to associate himself with fellow A.S. Altadena Street gang members. His case has been requested by the probation gang unit officer to transfer supervision to him because of his continuous police contacts and associations with gang members." Appellant's counsel did not cross-examine Pinto.

After hearing argument, the court noted that dating back to his initial probation conditions, appellant had been ordered not to associate with anyone in a gang. Thus, appellant had been on notice throughout his time on probation that associating with gang members was prohibited. The court concluded that based on appellant's association with Romero and Pinto's testimony, gang terms were appropriate. The court stated: "I hope that they will help you stay away from people who are going to get you into more trouble and create problems for you." The court also ordered appellant to serve 27 days with credit for 27 days served. Appellant subsequently filed the instant appeal.

II

DISCUSSION

We review probation conditions for abuse of discretion. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) The juvenile court may "impose and require

any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b). “A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile. [Citation.] That discretion will not be disturbed in the absence of manifest abuse. [Citation.]” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5.)

“Generally, ‘[a] condition of probation will not be held invalid unless it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. . . .” [Citation.]’ [Citation.] This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long the condition is reasonably related to preventing future criminality.” (*People v. Olguin* (2008) 45 Cal.4th 375, 379-380, see also *People v. Lent* (1975) 15 Cal.3d 481.) Further, in fashioning conditions of probation, the juvenile court considers ““not only the circumstances of the crime but also the minor’s entire social history.”” (*In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1500, disapproved on another point in *In re Sade C.* (1996) 13 Cal.4th 952, 962, fn. 2.)

This is not a close case. The evidence was uncontested that appellant, in clear violation of probation terms that had been in effect for years, had associated with Romero, a gang member on probation. Further, Pinto testified that appellant had continued to associate with A.S. Altadena Street gang members, to the extent that the gang unit probation officer wanted appellant transferred to his supervision.

Pinto's testimony was supported by additional details set forth in the probation report, which the court also considered. In addition to his association with Romero, the report stated that in October 2012 appellant had been seen by a Tustin police officer drinking beer with a probationer who was a documented Altadena Street gang member. On another occasion, in December 2012, appellant was seen by law enforcement officers in known Altadena Street gang territory, associating with six to seven other individuals in an alley. When approached by police, everyone ran, but two documented gang members were detained, one from Altadena Street and one from a gang known as "Lopers." Appellant and a female entered the residence of another Altadena Street gang member on formal probation, and appellant was eventually taken into custody. He stated that he fled because he did not want to be harassed. He was arrested on charges of obstructing or resisting an officer and street terrorism. (Pen. Code, § 148, subd. (a)(1); § 186.22, subd. (d).)

Earlier, in March 2010, appellant had been arrested for vandalism and possession of graffiti tools. Appellant and his companions had vandalized a school by writing "DELUX AS" at several locations. At the time, appellant told a police officer that his moniker was "DELUX" and "AS" stood for Altadena Street.

The totality of the facts before the court indicated that appellant's association with gang members was continuing, perhaps escalating. The gang probation conditions were clearly related both to appellant's past offenses and the potential for future criminality, and were therefore permissible. (*People v. Olguin, supra*, 45 Cal.4th at pp. 379-380.) The trial court did not abuse its discretion in imposing gang terms.

III
DISPOSITION

The court's order is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.